

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96813

August 12, 2011

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, HI

ADMINISTRATIVE ENFORCEMENT ACTION FOR  
CITATION NO. 1 AI-OA-PJR031 ISSUED TO LEE WILLIAM ON JULY 4, 2011  
FOR THE EMERGENCY RULE PROHIBITION UNDER  
HAR SECTION 13-256-73.13, "AHU O LAKA SAFETY ZONE"

The Division of Boating and Ocean Recreation (DOBOR) submits the following citation for disposition by the Board of Land and Natural Resources (Board) of the violation of HAR section 13-256-73.13(b)(1) at the Kaneohe Bay sandbar, Ahu o Laka safety zone by Lee William.

**BACKGROUND**

Hawaii Administrative Rule (HAR) section 13-256-73.13 is an emergency rule adopted by the Board at its June 23, 2011 meeting, and signed and filed with the Office of the Lieutenant Governor on the same date. A legal notice of the emergency rule was published on June 28, 2011 in the Honolulu Star-Advertiser. Shortly thereafter, copies of the adopted rule were posted at the Heeia Kea Small Boat Harbor, the Kaneohe Yacht Club, and the Kaneohe Marine Air Corps Station. Progress in the adoption and enforcement of the new rule was followed closely in the local media with stories on the emergency rule appearing as early as June 21, 2011, with extensive coverage in both print media and on television. An infraction of the Safety Zone has not been previously addressed by the Board.

The first three-day weekend involving a state holiday after the emergency rule took effect was the 2011 Fourth of July weekend (July 2, 3, and 4), with the final day being a Monday.

**ACTIVITIES ALLEGED**

On or about 1:10 p.m., Monday, July 4, 2011, Lee William was cited for a single count of consuming, using, or possessing alcohol within Zone H-2 (Ahu o Laka safety zone), thereby committing an administrative infraction in violation of HAR section 13-256-73.13(b)(1). The alleged violator was observed in possession of alcohol by Division of Conservation and Resources Enforcement (DOCARE) officer(s) under the following circumstances:

DOCARE Officer P. Rivera observed William with a bottle of "Jim Beam" in his hand, and as the officer approached, slowly lowered the bottle below the gunwale of the vessel

below the view of the Officer. Subject was present on a vessel with several other people on board.

Place: Ahu o Laka (GPS coordinates N 21 deg 27.753 min, W 157 deg 48.525 min)

Date: July 2, 2011

Time: 1310 hrs

Identification: Lee William verbally identified himself by name, address, date of birth, and social security number.

Citation issued: Citation No. 1 AI-OA- PJR031 was given to William, who signed the citation. The citation instructed the person cited to appear before the Land Board meeting set for August 12, 2011, at 9:00 a.m.

According to the citation, William agreed to open his coolers aboard his vessel. A Corona beer bottle was also observed along with the Jim Beam bottle. Also within plain view was a blue cup on the seat of the vessel containing an alcohol type beverage.

The safety zone is delineated by six (6) white/orange cylindrical-shaped buoys which indicate the H-2 safety zone. The vessel that William was aboard was anchored on the sandbar, within the buoys. There were several personnel on-board.

## LEGAL REFERENCES

The emergency rule is effective for no more than 120 days from the June 23, 2011 filing date. Under subsection 13-256-73.13(b), HAR, the following actions are prohibited in the Ahu o Laka Safety Zone between the hours of 12:00 am and 11:59 pm of any day of a three-day weekend involving a state holiday. Infractions shall be subject to penalties as provided in sections 200-14 and 200-14.5, Hawaii Revised Statutes (HRS).

1. Consumption, use, or possession of alcohol.
2. Entering or remaining in area while under the influence of alcohol, narcotics, or drugs.
3. Disorderly conduct, per section 711-1101, HRS.

Under subsection (c), in addition to any other penalty authorized by law, a violation of subsection (b) shall be subject to penalties as provided in sections 200-14 and 200-14.5, Hawaii Revised Statutes.

If pursued in court, section 200-14, HRS (Violation of rules; penalty.), provides that any person, vessel, agent, owner, or crew who violates any rule adopted by the department under part I, chapter 200, shall be fined not more than \$1,000 or less than \$50 for each violation, provided that in addition to or as a condition to the suspension of the fines and penalties, the court may deprive the offender of the privilege of operating or mooring any vessel in state waters for a period of not more than thirty days.

Section 200-14.5, HRS (General administrative penalties), authorizes the Board to set, charge, and collect administrative fines and to recover administrative fees and costs, including attorney's fees and costs, or bring legal action to recover administrative fines and fees and costs. Subsection 200-14.5(c), HRS, allows for fines of not more than \$5,000 for a first violation and increasing graduated penalties if for a previous violation or violations within five years of this violation.

## LEGAL STANDARD

If brought to an HRS chapter 91 contested case, an administrative enforcement action is judged by the *preponderance of evidence* standard, as per HRS sec. 91-10.

## DISCUSSION

Subsection 13-256-73.13(b), HAR, states that the consumption, use, or possession of alcohol is prohibited in the Ahu o Laka Safety Zone, as well as entering or remaining while under the influence of alcohol. While there is no evidence that Mr. William was intoxicated while operating the vessel; he was in possession of alcohol within the boundaries of Zone H-2 which is an alcohol free zone.

As provided by HRS section 91-9, a contested case hearing may be requested either orally or in writing prior to the end of the Land Board meeting in the event that the person found in violation should choose to contest the outcome of the Board's decision. Under DLNR's rules of practice and procedure, a written request for a contested case hearing must also be mailed or delivered in person to the Office of the Chairperson within ten calendar days from the close of the Board meeting.

RECOMMENDATIONS:

That the Board:

1. Find that an administrative infraction of HAR section 13-256-73.13(b)(1) was committed under Citation No. 1 AI-OA- PJR031, and that Lee William committed the infraction.
2. The Board determine the appropriate fine and/or penalty, if any, to issue to Lee William per section 200-14.5, HRS.

Respectfully submitted,



Edward R. Underwood  
Administrator

APPROVED FOR SUBMITTAL



William J. Aila, Jr.  
Chairperson